

CRITICAL ANALYSIS OF ENVIRONMENTAL LAW V/S DEVELOPMENT: AGENTS OF FRAMEWORK, DEVELOPMENT, AND IMPLEMENTATION

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ABSTRACT

In the present era, the graph of the rapid industrialization and other activities for the development and growth of the countries has increased which somehow can affect the natural environment. It is a matter of international concern and also international organizations and Conferences recognize it as a global issue and also suggest the Governments of the countries for taking effective steps to protect the environment and human health in due course of the development process. Development is the need of the present which is crucial for the advancement of the countries but somehow it compromised the natural environment. As we see the rate of global warming, climate change, excessive carbon emission, etc increasing rapidly. Human society deserves a healthy environment and also the government of different countries have implemented certain laws and regulations and made the guidelines that need to be followed also the judiciary plays an eminent role in it. Through this, the awareness regarding the environment has been increased and it gives a way that how the development process can be done without harming the environment. This article attempts to analyze the Indian Environment Laws and whether is it effective to curb the damages done by the development process and it also analyses the Role of International Organizations and Conferences in environmental issues.

Keywords: *Industrialization, Development, Environment, Human Health, International Organizations.*

INTRODUCTION

The surroundings which are around living beings and affect their lives are considered the environment and it is a crucial factor for survival on this planet. A healthy environment is a requisite for the quality of the life but as the world is growing and developing it is damaging the natural and healthy environment as a result, we can see that there is an immense rise in pollution. However, it is now recognized as a matter of international concern and

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international organizations and Governments of different countries have taken preventive steps for resolving environmental issues. Environment laws are very significant regarding this subject matter and also, and they can be considered as a part of basic human rights which is important for the development of human society. At the international level the Stockholm Conference, Rio Conference, and other declarations and conferences play a significant role to give principles and a set of guidelines for environmental policies. In India, the constitution and other legislations recognized environmental issues like Articles 48-A and 51-A of the constitution and acts like, The Forest (Conservation) Act of 1980, The Environment Protection Act of 1986, and other acts which give the set of guidelines and rules which have to be followed to protect the environment. However, there is various nationally and internationally framed rules and regulation but it is not implemented correctly by the authorities and governments which leads human society to this kind of problem. But these rules and regulations are very crucial and it is very helpful in the overall social, and economic development. Also, these can help to deal with the issues that arise between the development process and the environment.

ENVIRONMENTAL LAWS AND THEIR EFFECT ON THE DEVELOPMENT PROCESS

Environmental laws are important to regulate the activities which can affect the environment. Without such protective laws environment cannot be secured and also it can be affected by the development process which can heavily harm the development process. Although it is a fact that the development process is unavoidable and it is crucial for the economic growth of the country and also increases the job opportunities for many people but its impact on the environment cannot be neglected. In India, parliament enacted several acts related to the environment which are as follows:

Environment Protection Act of 1986: India participated in the Stockholm conference which was held in 1972 and in furtherance of it, the Indian Parliament enacted the Environment Protection Act 1986 which aims to protect and improvement of the environment. This act is comprehensive in nature and it empowers the central government to take all necessary steps and can for authorities to take preventive measures for curbing environmental pollution.¹ India had some other acts before the implementation of the environment protection act but due to the changing conditions and the need for detailed rules and regulations, this act was

¹ The Environment (Protection) Act 1986, s 3

enacted. Also, the Stockholm conference mandates the government of the countries to implement all the decisions which are the outcome of this conference.

Salient features of the Environment Protection Act, 1986:

- Through this act central government can plan and execute the nationwide program for the prevention, control, and abatement of environmental pollution and restriction of areas in which any industries, operations, or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. (Section 3)
- The central government has the power to direct the closure, prohibition, or regulation of any industry, operation, or process and the stoppage or regulation of the supply of electricity or water, or any other service. (Section 5)
- This act mandates that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed. (Section 7)
- This act gives provision for the establishment of environmental laboratories for testing the samples and other related functions prescribed by the act. (Section 12)
- This act provides punishment against those who go against any of the provisions of this act and harms the environment. (Section 15)

The Forest (Conservation) Act of 1980: This act is very crucial as it is made for the conservation of forests. The forests are very crucial for the ecosystem balance but the forests are much affected by the rise in the development process. The main problem was deforestation and for preventing it, this act was enforced on 25th October 1980.

Features of the Forest (Conservation) Act of 1980:

- This act only empowers the central government to make any decision and also the central government can give directions regarding the restriction on the de-reservation of forests or use of forest land for non-forest purposes. (Section 2)
- The central government can constitute an advisory committee for advising the government regarding matters related to forest conservation. (Section 3)

- This act mentions the penalty for the person who goes against the provisions of the section. The provision for punishment was inserted through the amendment made in 1988.

The Wildlife (Protection) Act, 1970: India has diverse species of plants and animals but due to the deforestation of the forest there is an uncertain decline in the number of these species which is a matter of concern because it can affect the ecological balance. So as a preventive measure, the Parliament of India enacted the Wildlife (Protection) Act of 1970 which aims to protect plants, birds, and wild animals. Initially, it was a state subject but after the 42nd amendment it was transferred to the concurrent list and also it can be noticed that after the enactment of this act, it gives better protection to wildlife and also the number of national parks in India has been increases which are 106 till now.²

Features of the Wildlife (Protection) Act, 1970:

This act prohibits the hunting of wild animals that are listed in schedules 1 to 4 but is subject to certain exceptions as stated in section 11 and section 12. (Section 9)

- It determines the prohibition of picking, uprooting, etc. of specified plants from any forest area. (Section 17A)
- This act gives the power to the state government to declare any area as a sanctuary. (Section 18)
- It determines the prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals. (Section 49 B)
- It provides the penalties against the offender or who acts against the provisions of this act. (Section 51)

Some of the bodies or authorities constituted under this act are as follows:

National Board for Wildlife³: The central government can constitute the National Board for Wildlife in which the Prime Minister will be the chairperson and the Minister in charge of Forests and Wild Life will be the Vice-Chairperson. The board will advise the central

² National Parks (Wildlife Institute of India) <
https://wii.gov.in/nwdc_national_parks#:~:text=There%20are%20106%20existin6%20national,2023.>
Accessed February 23, 2023

³ Wildlife (Protection) Act, 1970, s 5A

government and also the state government regarding the policies relating to wildlife conservation as per section 5C.

State Board for Wildlife⁴: Through this provision, the state government is empowered to constitute the State Board for Wildlife in which the Chief Minister of the State and in the case of the Union territory, either Chief Minister or Administrator, as the case may be will be the Chairperson and the Minister-in-charge of Forests and Wild Life will be the Vice-Chairperson. The board advises the state government for making any area a protected area and will help in making the policies related to the conservation and protection of wildlife and specified plants as per Section 8.

Central Zoo Authority⁵: Central government can make a body that will be determined as the Central Zoo Authority and it will consist of a chairperson, a maximum of 10 members, and a member secretary. They will be appointed accordingly to the central government and the authority will regulate the functioning of the zoos. So, these Environmental Laws are very crucial to regulate the policies relate to the protection and conservation of the natural environment and these laws determined and prevent all the activities which can harm ecological balance. Thus, environmental laws play a significant role to deal with the rapid increase in the development process which can damage the environment.

RIGHT TO LIFE AND ENVIRONMENT PROTECTION (ROLE OF JUDICIARY IN IT)

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The right to life is mentioned in Article 21 of the Indian Constitution, this article is a one-liner but includes many things or liberties which are indirectly connected to Article 21. Judiciary plays an important role in recognizing through various judgements that the Right to have a clean and healthy environment is a fundamental right that comes under the ambit of Article 21. The case laws like:

M.C. Mehta v. Union of India⁶: This case is also known as the “Ganga Pollution Case”. In this case, Supreme Court ordered to close-off of the tanneries and Singh J. stated that the closure of tanneries may create unemployment and also there is loss of revenue, but life,

⁴ Wildlife (Protection) Act, 1970, s 6

⁵ Wildlife (Protection) Act, 1970, s 38A

⁶ 1988 SCR (2) 530

health, and ecology have greater importance for the people because no person shall be deprived of his life under Article 21 of the Constitution.

Charan Lal Sahu v. Union of India⁷: The Supreme Court held that the State must take adequate and effective steps to enforce and protect Constitutional rights enshrined under Articles 21, 48-A, and 51-A (g).

ROLE OF INTERNATIONAL ORGANIZATIONS AND CONFERENCES IN ENVIRONMENTAL ISSUES

International organizations and conferences play an eminent role in policy-making regarding the protection of the environment. International organizations are present in every step of norm development—they set the agenda for international negotiations, prepare draft conventions, adopt guidelines and codes of conduct, directly alter the content of—or develop—treaty obligations, and adopt compliance regimes.⁸ Some of the International Organizations and Conferences are as follows:

Stockholm Conference: It was the first conference on the issues related to the environment and recognised the right to have a healthy environment for living. This was held in Stockholm in 1972 with the theme of “Only one earth”. The Stockholm Declaration, which contained 26 principles, placed environmental issues at the forefront of international concerns⁹ and also established the United Nations Environment Programme (UNEP).

Rio Conference: The United Nations Conference on Environment and Development (UNCED) also known as Rio Conference was held in Rio de Janeiro (Brazil) from 3 to 14 June 1992. The primary objective of the Rio 'Earth Summit' was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century¹⁰ and it also recognises the concept of sustainable development.

⁷ 1989 SCR Supl. (2) 597

⁸ Rita Guerreiro Teixeira, The Role of International Organizations in the Development of International Environmental Law: Adjusting the Lenses of Analysis (Case Western Reserve Journal of International Law, 2021) < <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2601&context=jil> > Accessed February 24, 2023

⁹ United Nations Conference on the Human Environment, 5-16 June 1972, Stockholm (United Nations) < <https://www.un.org/en/conferences/environment/stockholm1972> > Accessed February 24, 2023

¹⁰ United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992 (United Nations) < <https://www.un.org/en/conferences/environment/rio1992> > Accessed February 24, 2023

- Intergovernmental Panel on Climate Change: It was formed by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP) in 1988. The Intergovernmental Panel on Climate Change (IPCC) is the leading international body for the assessment of climate change and it is a key source of scientific information and technical guidance to the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol, and the Paris Agreement.¹¹

CONCLUSION

A clean and healthy environment is very crucial for every living being and for this various legislation were framed. This is a very sensitive topic and it is very crucial to preserve and protect the natural environment. Also, people's awareness regarding the environment can help to develop a strong protective regime for the environment. Environmental laws must be amended according to the changing conditions of the world for achieving the goal of conserving the natural environment and the concept of sustainable development must be adopted. It is very much needed to discover alternative sources of energy which can decrease the dependency on sources that are limited and also such sources of energy must be more environmentally friendly. The environment of the earth is changing and there is an increase in natural calamities, it is high time to consider this very seriously and implement all the laws correctly so that we can prevent and make our environment healthy and safe for living.

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¹¹ Intergovernmental Panel on Climate Change(Australian Government, Department of Climate Change, Energy, the Environment and Water)< [\[www.jlrjs.com\]\(http://www.jlrjs.com\)](https://www.dcceew.gov.au/climate-change/international-commitments/intergovernmental-panel#:~:text=The%20Intergovernmental%20Panel%20on%20Climate,Kyoto%20Protocol%20and%20Paris%20Agreement.> Accessed February 24, 2023</p></div><div data-bbox=)